

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF VETERINARY MEDICINE

In the Matter of William N. Dudley,
D.V.M., License No. C0858.

**ORDER DENYING
MOTION TO CERTIFY**

Appearances: Tamar N. Gronvall, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2127, represents the Complaint Review Committee, Board of Veterinary Medicine. Robert E. Kuderer, Johnson & Condon, 7401 Metro Boulevard, Suite 600, Minneapolis, MN 55439-3034, represents William M. Dudley, D.V.M., Licensee.

On May 19, 2006, Administrative Law Judge Beverly Jones Heydinger issued Order on Motion for Partial Summary Disposition (Order), granting in part and denying in part the Complaint Review Committee's (Committee) motion for summary disposition. On June 26, 2006, the Committee submitted a motion to certify the Order to the Board of Veterinary Medicine (Board). The Committee alternatively requests a stay of the contested case proceeding pending the Board's consideration of the Order. The Licensee opposes this motion.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the Memorandum attached hereto,

IT IS HEREBY ORDERED:

1. That the Committee's Motion is DENIED.
2. That a prehearing conference will be held on **August 16, 2006**, at **9:30 a.m.** to schedule the hearing. The Administrative Law Judge will initiate the call.

Dated this 13th day of July, 2006

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

The Committee's Notice of and Order for Hearing includes multiple allegations of incompetence and misconduct by the Licensee. At the close of discovery, the Committee moved for partial summary disposition on four issues: 1) whether the Licensee violated the general record keeping requirements of veterinarians and the specific record keeping directives; 2) whether the Licensee had failed to comply with written requests for information or documentation by the Board within 30 days of the requests; 3) whether the Licensee had failed to obtain the client's consent for patients hospitalized overnight; and 4) whether the Licensee practiced veterinary medicine under a false or assumed name or impersonated another practitioner. The ALJ granted summary disposition on some alleged violations and denied others.

The Committee has moved to certify the Order to the Board. Minn. Rule 1400.7600 sets out the six factors to be weighed in determining whether a motion should be certified. Those factors are:

- (A) Whether the motion involves a controlling issue of law over which there is a difference of opinion.
- (B) Whether the ultimate termination of the hearing would be materially advanced.
- (C) Whether the time expended between the motion to certify and the ultimate determination would prejudice the prevailing party.
- (D) Whether to delay the ultimate determination to after the hearing would render the matter moot or render the agency ruling meaningless.
- (E) Whether developing a full record is necessary and would avoid remanding the matter.
- (F) Whether the issue to be certified is solely within the expertise of the agency.¹

The Committee's purpose in bringing the Motion is not entirely clear. It relies upon one factor, that certification would materially advance the ultimate termination of the hearing, as the basis for its motion to certify.² Apparently the Committee would like to have the Board consider whether the violations upon which the Committee has prevailed are sufficient to determine the appropriate discipline. It does not appear that the Committee intends to ask the Board to review the issues upon which summary disposition was denied, nor does it

¹ Minn. R. 1400.7600.

² Minn. R. 1400.7600 (B).

appear that the Committee claims that the prior Order was based on an error of law.

The Licensee argues that that the Committee's motion to certify is unwarranted. The Licensee asserts that certification could allow the Committee to go before the Board, seek discipline against the Licensee on the basis of the proven violations, and still resurrect the remaining violations in the contested case hearing if the Committee is not satisfied with the Board's disposition.

The ALJ declines to certify the matter at this time. The purpose of certification is not to permit piecemeal review of the proven violations. The appropriate purpose is to correct possible errors that may advance the ultimate resolution of the matter. If the Committee is free to return to the contested case process to prove additional violations in order to pursue greater discipline, certification would not promote a final determination of this matter.

The ALJ notes that none of the remaining factors listed in the rule weigh in favor of certification: 1) the motion does not involve a controlling issue of law over which there is a difference of opinion;³ 2) there is no prejudice to the Committee arising from conducting the hearing before final decision;⁴ 3) the short delay in the ultimate determination until after a hearing will not render the matter moot or render the agency ruling meaningless;⁵ 4) by first conducting an evidentiary hearing, the record will be fully developed and there is less likelihood that the matter will be remanded;⁶ and 5) the issues relevant to the motion do not fall solely within the expertise of the Board.⁷

The cost of going to hearing is not sufficient prejudice since it is the Committee that initiated the action and may choose to proceed, and it is not apparent from the motion that the Committee is seeking the Board's expertise to resolve an application of the law to the facts.

In light of the denial of the motion to certify, there is no basis for staying the contested case proceedings.

A prehearing conference will be held to set the matter for hearing. However, the Committee has the discretion to dismiss the remaining charges and proceed to the Board with the current record.

B.J.H.

³ Minn. R. 1400.7600 (A).

⁴ Minn. R. 1400.7600 (C).

⁵ Minn. R. 1400.7600 (D).

⁶ Minn. R. 1400.7600 (E).

⁷ Minn. R. 1400.7600 (F).